

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

*Your Committee on Environmental Affairs, to which was referred House Bill 1281, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 13-11-2-74.5 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 74.5. (a) "Exempt
- 4 isolated wetland", for purposes of IC 13-18 and environmental
- 5 management laws, means an isolated wetland that:
- 6 (1) is a voluntarily created wetland unless:
- 7 (A) the wetland is approved by the department for
- 8 compensatory mitigation purposes in accordance with a permit
- 9 issued under Section 404 of the Clean Water Act or
- 10 IC 13-18-22;
- 11 (B) the wetland is reclassified as a state regulated wetland
- 12 under ~~IC 13-18-22-6(c)~~; **IC 13-18-22-6(e)**; or
- 13 (C) the owner of the wetland declares, by a written instrument:
- 14 (i) recorded in the office of the recorder of the county or
- 15 counties in which the wetland is located; and

- 1 (ii) filed with the department;
 2 that the wetland is to be considered in all respects to be a state
 3 regulated wetland;
 4 (2) exists as an incidental feature in or on:
 5 (A) a residential lawn;
 6 (B) a lawn or landscaped area of a commercial or
 7 governmental complex;
 8 (C) agricultural land;
 9 (D) a roadside ditch;
 10 (E) an irrigation ditch; or
 11 (F) a manmade drainage control structure;
 12 (3) is a fringe wetland associated with a private pond;
 13 (4) is, or is associated with, a manmade body of surface water of
 14 any size created by:
 15 (A) excavating;
 16 (B) diking; or
 17 (C) excavating and diking;
 18 dry land to collect and retain water for or incidental to
 19 agricultural, commercial, industrial, or aesthetic purposes;
 20 (5) subject to subsection (c), is a Class I wetland with an area, as
 21 delineated, of one-half (1/2) acre or less;
 22 (6) subject to subsection (d), is a Class II wetland with an area, as
 23 delineated, of one-fourth (1/4) acre or less;
 24 (7) is located on land:
 25 (A) subject to regulation under ~~the~~ United States Department
 26 of Agriculture wetland conservation ~~rules~~, ~~also known as~~
 27 **programs, including Swampbuster and the Wetlands**
 28 **Reserve Program**, because of voluntary enrollment in a
 29 federal farm program; and
 30 (B) used for agricultural or ~~associated other~~ purposes allowed
 31 under the ~~rules~~ **programs** referred to in clause (A); or
 32 (8) is constructed for reduction or control of pollution.
 33 (b) For purposes of subsection (a)(2), an isolated wetland exists as
 34 an incidental feature:
 35 (1) if:
 36 (A) the owner or operator of the property or facility described
 37 in subsection (a)(2) does not intend the isolated wetland to be
 38 a wetland;

- 1 (B) the isolated wetland is not essential to the function or use
 2 of the property or facility; and
 3 (C) the isolated wetland arises spontaneously as a result of
 4 damp soil conditions incidental to the function or use of the
 5 property or facility; and
 6 (2) if the isolated wetland satisfies any other factors or criteria
 7 established in rules that are:
 8 (A) adopted by the water pollution control board; and
 9 (B) not inconsistent with the factors and criteria described in
 10 subdivision (1).
 11 (c) The total acreage of Class I wetlands on a tract to which the
 12 exemption described in subsection (a)(5) may apply is limited to the
 13 larger of:
 14 (1) the acreage of the largest individual isolated wetland on the
 15 tract that qualifies for the exemption described in subsection
 16 (a)(5); and
 17 (2) fifty percent (50%) of the cumulative acreage of all individual
 18 isolated wetlands on the tract that would qualify for the exemption
 19 described in subsection (a)(5) but for the limitation of this
 20 subsection.
 21 (d) The total acreage of Class II wetlands on a tract to which the
 22 exemption described in subsection (a)(6) may apply is limited to the
 23 larger of:
 24 (1) the acreage of the largest individual isolated wetland on the
 25 tract that qualifies for the exemption described in subsection
 26 (a)(6); and
 27 (2) thirty-three and one-third percent (33 1/3%) of the cumulative
 28 acreage of all individual isolated wetlands on the tract that would
 29 qualify for the exemption described in subsection (a)(6) but for the
 30 limitation of this subsection.
 31 (e) An isolated wetland described in subsection (a)(5) or (a)(6) does
 32 not include an isolated wetland on a tract that contains more than one
 33 (1) of the same class of wetland until the owner of the tract notifies the
 34 department that the owner has selected the isolated wetland to be an
 35 exempt isolated wetland under subsection (a)(5) or (a)(6) consistent
 36 with the applicable limitations described in subsections (c) and (d).
 37 SECTION 2. IC 13-18-22-6 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as

otherwise specified in ~~subsection~~ **subsections (b) and (c)**, compensatory mitigation shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-site Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) A wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation for purposes of this section. The replacement class of a wetland that is a water of the United States shall be determined by applying the characteristics of a Class I, Class II, or Class III wetland, as appropriate, to the replacement wetland as if it were an isolated wetland.

~~(c)~~ **(d)** The off-site location of compensatory mitigation must be within:

- (1) the same eight (8) digit U.S. Geological Service hydrologic unit code; or
- (2) the same county;

as the isolated wetlands subject to the authorized wetland activity.

~~(d)~~ **(e)** Exempt isolated wetlands may be used to provide

- 1 compensatory mitigation for wetlands activities in state regulated
- 2 wetlands. An exempt isolated wetland that is used to provide
- 3 compensatory mitigation becomes a state regulated wetland.

(Reference is to HB 1281 as introduced.)

and when so amended that said bill do pass.

Representative Wolkins